

1996

## Punishment for Murder. Special Circumstances. Drive-By Shootings.

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**Punishment for Murder. Special Circumstances.  
Drive-By Shootings. Legislative Initiative Amendment.**

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**Official Title and Summary Prepared by the Attorney General**

**PUNISHMENT FOR MURDER. SPECIAL CIRCUMSTANCES.  
DRIVE-BY SHOOTINGS. LEGISLATIVE INITIATIVE AMENDMENT.**

- Adds the intentional murder of a person by discharging a firearm from a motor vehicle with the intent to inflict death to the list of special circumstances for first-degree murder for which the death penalty or life imprisonment without the possibility of parole is authorized.
- Joined to Proposition 195 (Chapter 477, Statutes of 1995). If both measures pass, murder during carjacking, murder resulting from a carjacking kidnap, and murder of juror in retaliation for, or to prevent, performance of juror's duties, are also added to the list of special circumstances.

**Summary of Legislative Analyst's  
Estimate of Net State and Local Government Fiscal Impact:**

- Adoption of this measure would result in unknown state costs, potentially ranging into several millions of dollars annually in the long run.

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**Final Votes Cast by the Legislature on SB 9 (Proposition 196)**

Assembly: Ayes 55	Senate: Ayes 29
Noes 12	Noes 3

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## Analysis by the Legislative Analyst

### Background

First degree murder is generally defined in state law as murder which is planned in advance, or which takes place during certain other crimes, including robbery, kidnapping, rape, or arson. It is generally punishable by a sentence of 25-years-to-life imprisonment with the possibility of release from prison on parole. However, a conviction for first-degree murder results in a sentence of death or life imprisonment *without* the possibility of parole if the prosecutor charges and the court finds that one or more "special circumstances" specified in state law apply to the crime.

Currently, a murder resulting from a "drive-by shooting"—shooting someone from a motor vehicle—is a first-degree murder if the firearm was intentionally discharged with the intent to kill another person. Such a murder is punishable by a sentence of 25-years-to-life

imprisonment with the possibility of parole. Such a murder is not a special circumstance warranting the more severe penalty of death or life imprisonment without the possibility of parole.

### Proposal

This measure adds first-degree murder resulting from a drive-by shooting to the list of special circumstances punishable by the death penalty or life imprisonment without the possibility of parole.

### Fiscal Effect

This measure would increase state costs primarily as a result of longer prison terms for offenders who receive a life sentence without the possibility of parole. The magnitude of these costs is unknown, potentially ranging into several millions of dollars annually in the long run.

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**For the text of Proposition 196 see page 58**

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## Punishment for Murder. Special Circumstances. Drive-By Shootings. Legislative Initiative Amendment.

### Argument in Favor of Proposition 196

Murder by drive-by shooting has reached epidemic levels in California.

An average of more than one young person under the age of 18 was a victim of a drive-by shooting in Los Angeles alone *every week* in 1991, according to a recent study in the New England Journal of Medicine; 36 of these youths died.

The study found that drive-by shootings are no longer confined to the inner city, but have spread everywhere. Because the shooting is done from a moving vehicle, too often the victim is an unintended target—an innocent child, a high school student with no gang affiliation, a young mother who happens to live in a neighborhood targeted by drive-by shooters, or a harmless passer-by.

It's got to stop.

Proposition 196 would put drive-by shooters on notice that they can be subjected to the strongest penalty California can impose: the death penalty.

Proposition 196 would allow the death penalty, or life in prison without possibility of parole, for *intentional*, cold-blooded, first-degree murder committed by the discharge of a firearm from a motor vehicle at a person outside the vehicle.

Please help us free our society from the senseless outrage of drive-by murder. Vote YES on Proposition 196.

**RUBEN S. AYALA**

*State Senator, 32nd District*

**GREGORY D. TOTTEN**

*Executive Director, California District  
Attorneys Association*

### Rebuttal to Argument in Favor of Proposition 196

Everywhere it has been used, the death penalty has failed to reduce murders and other kinds of violence. In fact, studies actually show violence decreases after repeal of death penalties. If you want to stop drive-by shootings, work to rebuild communities, and vote NO on Proposition 196.

Any drive-by killing is deplorable and needs to be punished. Today, if a "special circumstance" such as a prior murder conviction is involved, the death penalty applies, otherwise the penalty may be life in prison without possibility of parole.

Proponents of Proposition 196 want to distinguish this crime from less heinous murders simply by the location of the defendant when the crime was committed. They want a killer who shoots from a car to be eligible for the death penalty, while the same killer who walks into a restaurant and shoots a child is not.

Applying the death penalty in this way would raise grave constitutional questions. According to the United States Supreme Court, there must be a meaningful basis for distinguishing between those who receive the death penalty and those who do not. The entire justification for a death penalty rests on the idea that "special circumstances" justify a special penalty. If this proposal is enacted, it would merely underline the irrationality of the entire death penalty.

As a voter, this is your chance to say NO to laws that divert attention and law enforcement resources from the really effective ways to reduce crime. VOTE NO ON PROPOSITION 196.

**MICHAEL HENNESSY**

*Sheriff, City and County of San Francisco*

**WILSON C. RILES, JR.**

*Executive Director, American Friends Service  
Committee of Northern California*

# **Punishment for Murder. Special Circumstances. Drive-By Shootings. Legislative Initiative Amendment.**

**196**

## **Argument Against Proposition 196**

### **Proposition 196:**

- WASTES TAX DOLLARS, a cost largely borne by cities and counties;
- FAILS to address actual causes of violence;
- IGNORES LAW ENFORCEMENT views on the priorities for effective policing of cities and communities;
- MAKES MISTAKES LIKELY in the administration of justice.

This measure does not focus on the real steps needed to reduce violence and crime.

It is clear that the existence of capital punishment in California already COSTS TAXPAYERS MILLIONS of dollars due to the more extensive police work and court proceedings involved—much more than the cost of sentences to life in prison without possibility of parole. Expanding the death penalty would take even more money away from education, recreation, and other programs that actually do keep young people away from gangs and criminal activity. These costs would largely be borne by cities and counties which are already in financial trouble.

There is no evidence to suggest that the threat of the death penalty will stop the gang activity which often leads to a drive-by shooting. Experts recognize that CAPITAL PUNISHMENT FAILS TO REDUCE VIOLENCE. In fact, a recent poll found that although most police chiefs support the death penalty in concept, they do not think expanding its use would reduce violence in their jurisdictions.

When asked about steps which would have a big impact on violence, law enforcement officers most often recommend strengthening families, neighborhoods, and churches; more swift and sure penalties for all crimes; improving control over illegal drugs; allowing greater latitude on rules of evidence; creating more jobs and greater economic opportunities; and getting guns out of circulation. ONLY 2% OF POLICE CHIEFS SUGGEST INCREASED USE of the death penalty as a priority for reducing violent crime.

Church leaders recognize that Proposition 196 is likely to harm suspects at lower income levels. Worse than that, it RISKS WRONGFUL CONVICTIONS of innocent individuals caught in ambiguous circumstances who will not be able to afford to resist a plea bargain. Plea bargains and separate trials also mean that in cases involving several defendants it is not unusual for the most culpable person to be spared the death penalty that is given to others. California voters should not make justice more capricious than it already is.

This legislation fails to take affirmative steps to reduce crime. Vote NO on Proposition 196.

**SENATOR MILTON MARKS**

*Chair, Senate Committee on Criminal Procedure*

**ROBERT P. OWENS**

*Retired Chief of Police, Oxnard Police Department*

**RIGHT REVEREND JERRY A. LAMB**

*Bishop of the Episcopal Diocese of Northern California*

## **Rebuttal to Argument Against Proposition 196**

Don't be misled by empty rhetoric!

**FACT: PROPOSITION 196** is strongly supported by EVERY major law enforcement organization in California.

**PROPOSITION 196** is supported by prosecutors, victims' organizations, and others concerned with the rising tide of gang violence in our communities.

**FACT: PROPOSITION 196** directly deals with one of the major crimes of violence plaguing California. According to the Los Angeles County Sheriff's Department, there were 1,816 drive-by shootings in Los Angeles County alone in 1994. In 1993 drive-by shooters claimed 97 lives in Los Angeles County.

**FACT: DRIVE-BY MURDER** is no longer just an inner city problem.

Cowardly gang-related shootings are spreading like wildfire to the suburbs and even rural California. Vicious though they are, drive-by murders are usually perverse thrill killings, not crimes of passion. All too often, the victims are innocent bystanders. Perpetrators of these senseless murders must face the most severe sanction the law can impose: **THE DEATH PENALTY.**

**PROPOSITION 196** is supported by:

Attorney General's Office

California Correctional Peace Officers Association

California Police Chiefs' Association

California Peace Officers' Association

California State Sheriffs' Association

California Organization of Police and Sheriffs

California District Attorneys Association

Women Prosecutors of California

Doris Tate Crime Victims Bureau

Los Angeles District Attorney

**MAKE THE PENALTY FIT THE CRIME.** Join these and other organizations and individuals who are sick and tired of gang-members preying on our communities. **VOTE YES ON PROPOSITION 196.**

**PETE WILSON**

*Governor*

**RUBEN S. AYALA**

*State Senator, 32nd District*

**GREG TOTTEN**

*Executive Director, California District Attorneys Association*

circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a); which felony results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall ~~suffer be punished by death or confinement imprisonment in the state prison for life without the possibility of parole, in any case in which if~~ a special circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SEC. 3. This act affects an initiative statute and shall become effective only when submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SEC. 4. Section 2 of this bill incorporates amendments to Section 190.2 of the Penal Code proposed by both this bill and SB 9. It shall only become operative (1) both this bill and SB 9 are submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and become effective on the same date, (2) each bill amends Section 190.2 of the Penal Code, and (3) this bill receives more affirmative votes from the voters than SB 9, in which case Section 1 of this bill shall not become operative.

## Proposition 196: Text of Proposed Law

This law proposed by Senate Bill 9 (Statutes of 1995, Chapter 478) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends a section of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

SECTION 1. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant *who is found guilty of murder in the first degree* shall be ~~is~~ death or ~~confinement imprisonment in the state prison for a term of life without the possibility of parole in any case in which if~~ one or more of the following special circumstances has been found under Section 190.4; to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was ~~previously convicted previously of~~ murder in the first degree or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant has *been convicted in this proceeding* ~~been convicted of~~ more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or ~~cause caused~~ to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the ~~above enumerated above-enumerated sections of the Penal Code~~, or a former peace officer under any of ~~such those~~ sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent; engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission, or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant *prosecutor, or a former prosecutor or a former assistant prosecutor or assistant prosecutor*, of any local or state prosecutor's office in this state or any other state, or ~~a of any federal prosecutor's office~~, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in the ~~State of California, or in this or any other state of the United States~~, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official, *or a former elected or former appointed official*, of the federal government, of a local or state government of ~~California this state~~, or of any local or state government of any other state in of the United States, and the ~~killing murder~~ was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As utilized in this section, the phrase ~~especially "especially~~ heinous, atrocious, or cruel, manifesting exceptional ~~depravity depravity~~ means a conscienceless; or pitiless crime ~~which that~~ is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(i) Robbery in violation of Section 211 or 212.5.

(ii) Kidnapping in violation of Section 207 or 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of subdivision (b) of Section 451.

(ix) Train wrecking in violation of Section 219.

(j) Mayhem in violation of Section 203.

(k) Rape by instrument in violation of Section 289.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) *The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.*

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom ~~such the~~ special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to ~~suffer be punished by death or confinement imprisonment in the state prison for a term of life without the possibility of parole.~~

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall ~~suffer be punished by death or confinement imprisonment in the state prison for a term of life without the possibility of parole, in any case in which if~~ one or more of the special circumstances enumerated in subdivision (a) of ~~this section~~ has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a), which felony results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall ~~suffer be punished by death or confinement imprisonment in the state prison for life without the possibility of parole, in any case in which if~~ a special circumstance enumerated in paragraph (17) of subdivision (a) of ~~this section~~ has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SEC. 2. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant *who is found guilty of murder in the first degree shall be is death or confinement imprisonment in the state prison for a term of life without the possibility of parole in any case in which if one or more of the following special circumstances has been found under Section 190.4 ; to be true:*

- (1) The murder was intentional and carried out for financial gain.
- (2) The defendant was ~~previously convicted previously~~ of murder in the first degree or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.
- (3) The defendant ~~has~~, in this proceeding, ~~has~~ been convicted of more than one offense of murder in the first or second degree.
- (4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to ~~a human being one or more~~ human beings.
- (5) The murder was committed for the purpose of avoiding or preventing a lawful arrest ~~or to perfect, or attempt, or perfecting or attempting to perfect, an escape from lawful custody.~~
- (6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or ~~cause caused~~ to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to ~~a human being one or more~~ human beings.
- (7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the ~~above enumerated above-enumerated~~ sections of the Penal Code, or a former peace officer under any of ~~such those~~ sections, and was intentionally killed in retaliation for the performance of his or her official duties.
- (8) The victim was a federal law enforcement officer or agent; who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent; engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.
- (9) The victim was a firefighter, as defined in Section 245.1, who, while gaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.
- (10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission; or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.
- (11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (12) The victim was a judge or former judge of any court of record in the local, state, or federal system in ~~the State of California, or in this or any other state of the United States,~~ and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (13) The victim was an elected or appointed official or former official of the federal government, ~~or of a any local or state government of California, or of any local or state government of any other state in the United States this or any other state,~~ and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As ~~utilized used~~ in this section, the phrase ~~especially "especially heinous, atrocious, or cruel, manifesting exceptional depravity"~~ means a conscienceless, or pitiless crime ~~which that~~ is unnecessarily torturous to the victim.

- (15) The defendant intentionally killed the victim while lying in wait.
- (16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.
- (17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:
  - (i)
  - (A) Robbery in violation of Section 211 or 212.5.
  - (ii)
  - (B) Kidnapping in violation of Section 207 or, 209, or 209.5.
  - (iii)
  - (C) Rape in violation of Section 261.
  - (iv)
  - (D) Sodomy in violation of Section 286.
  - (v)
  - (E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.
  - (vi)
  - (F) Oral copulation in violation of Section 288a.
  - (vii)
  - (G) Burglary in the first or second degree in violation of Section 460.
  - (viii)
  - (H) Arson in violation of subdivision (b) of Section 451.
  - (ix)
  - (I) Train wrecking in violation of Section 219.
  - (J) Mayhem in violation of Section 203.
  - (K) Rape by instrument in violation of Section 289.
  - (L) Carjacking, as defined in Section 215.
- (18) The murder was intentional and involved the infliction of torture.
- (19) The defendant intentionally killed the victim by the administration of poison.

(20) *The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.*

(21) *The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.*

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom ~~such~~ the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for ~~a term of~~ life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall ~~suffer be punished by death or confinement imprisonment in the state prison for a term of life without the possibility of parole, in any case in which if one or more of the special circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.~~

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a); which ~~felony~~ results in the death of some person or persons, and who is found guilty of murder in the first degree therefore, shall ~~suffer be punished by death or confinement imprisonment in the state prison for life without the possibility of parole, in any case in which if a special circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.~~

The penalty shall be determined as provided in *this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.*

SEC. 3. This act affects an initiative statute, and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SEC. 4. Section 2 of this bill incorporates amendments to Section 190.2 of the Penal Code proposed by both this bill and SB 32. It shall only become operative if (1) both this bill and SB 32 are submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and become effective on the same date, (2) each bill amends Section 190.2 of the Penal Code, and (3) this bill receives more affirmative votes from the voters than SB 32, in which case Section 1 of this bill shall not become operative.

## Proposition 197: Text of Proposed Law

This law proposed by Senate Bill 28 (Statutes of 1995, Chapter 779) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends and adds sections to the Fish and Game Code, and adds a section of an initiative; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

SECTION 1. The Legislature finds and declares, as follows:

(a) It is appropriate for the Legislature and the Department of Fish and Game to act prudently to address the needs of our changing society. California's complex and ever-changing population requires that the department and the Legislature respond to emergencies and exigencies to safeguard the health and safety of the people of the state and to balance the needs of the people with the necessity to